

House Study Bill 103

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSPECTIONS AND APPEALS
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the licensing and inspection of hotels, home
2 food establishments, and food establishments and processing
3 plants, providing and increasing fees, making penalties
4 applicable, making an appropriation, and providing an
5 effective date.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 1378XD 82
8 nh/je/5

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1 1 Section 1. Section 137C.6, Code 2007, is amended to read
1 2 as follows:
1 3 137C.6 AUTHORITY TO ENFORCE.
1 4 1. The director shall regulate, license, and inspect
1 5 hotels and enforce the Iowa hotel sanitation code in Iowa.
1 6 Municipal corporations shall not regulate, license, inspect,
1 7 or collect license fees from hotels except as provided for in
1 8 the Iowa hotel sanitation code.
1 9 2. If a municipal corporation wants its local board of
1 10 health to license, inspect, and otherwise enforce the Iowa
1 11 hotel sanitation code within its jurisdiction, the municipal
1 12 corporation may enter into an agreement to do so with the
1 13 director. The director may enter into the agreement if the
1 14 director finds that the local board of health has adequate
1 15 resources to perform the required functions. A municipal
1 16 corporation may only enter into an agreement to enforce the
1 17 Iowa hotel sanitation code if it also agrees to enforce the
1 18 ~~Iowa food code rules setting minimum standards to protect~~
1 19 ~~consumers from foodborne illness adopted pursuant to section~~
1 20 ~~137F.3~~ 137F.2.
1 21 3. A local board of health that is responsible for
1 22 enforcing the Iowa hotel sanitation code within its
1 23 jurisdiction pursuant to an agreement, shall make an annual
1 24 report to the director providing the following information:
1 25 ~~1- a.~~ a. The total number of hotel licenses granted or
1 26 renewed during the year.
1 27 ~~2- b.~~ b. The number of hotel licenses granted or renewed
1 28 during the year broken down into the following categories:
1 29 ~~a- (1)~~ (1) Hotels containing fifteen guest rooms or less.
1 30 ~~b- (2)~~ (2) Hotels containing more than fifteen but less than
1 31 thirty-one guest rooms.
1 32 ~~c- (3)~~ (3) Hotels containing more than thirty but less than
1 33 seventy-six guest rooms.
1 34 ~~d- (4)~~ (4) Hotels containing more than seventy-five but less
1 35 than one hundred fifty guest rooms.
2 1 ~~e- (5)~~ (5) Hotels containing one hundred fifty or more guest
2 2 rooms.
2 3 ~~3- c.~~ c. The amount of money collected in license fees
2 4 during the year.
2 5 ~~4- d.~~ d. Other information the director requests.
2 6 4. The director shall monitor local boards of health to
2 7 determine if they are enforcing the Iowa hotel sanitation code
2 8 within their respective jurisdictions. If the director
2 9 determines that the Iowa hotel sanitation code is enforced by
2 10 a local board of health, such enforcement shall be accepted in
2 11 lieu of enforcement by the department in that jurisdiction.
2 12 If the director determines that the Iowa hotel sanitation code
2 13 is not enforced by a local board of health, the director may
2 14 rescind the agreement after reasonable notice and an
2 15 opportunity for a hearing. If the agreement is rescinded, the

2 16 director shall assume responsibility for enforcement in the
2 17 jurisdiction involved.

2 18 Sec. 2. Section 137C.9, Code 2007, is amended to read as
2 19 follows:

2 20 137C.9 LICENSE FEES.

2 21 1. Either the department or the municipal corporation
2 22 shall collect the following annual license fees:

2 23 ~~1- a.~~ For a hotel containing fifteen guest rooms or less,
2 24 ~~twenty forty~~ dollars.

2 25 ~~2- b.~~ For a hotel containing more than fifteen but less
2 26 than thirty-one guest rooms, ~~thirty sixty~~ dollars.

2 27 ~~3- c.~~ For a hotel containing more than thirty but less
2 28 than seventy-six guest rooms, ~~forty eighty~~ dollars.

2 29 ~~4- d.~~ For a hotel containing more than seventy-five but
2 30 less than one hundred fifty guest rooms, ~~fifty one hundred~~
2 31 dollars.

2 32 ~~5- e.~~ For a hotel containing one hundred fifty or more
2 33 guest rooms, ~~seventy-five one hundred fifty~~ dollars.

2 34 2. Fees collected by the department shall be deposited in
2 35 the general fund of the state. Fees collected by a municipal
3 1 corporation shall be retained by it and for its use.

3 2 Sec. 3. Section 137D.2, subsection 1, Code 2007, is
3 3 amended to read as follows:

3 4 1. A person shall not open or operate a home food
3 5 establishment until a license has been obtained from the
3 6 department of inspections and appeals. The department shall
3 7 collect a fee of ~~twenty-five fifty~~ dollars for a license.
3 8 After collection, the fees shall be deposited in the general
3 9 fund of the state. A license shall expire one year from date
3 10 of issue. A license is renewable.

3 11 Sec. 4. Section 137F.1, subsection 7, Code 2007, is
3 12 amended by striking the subsection.

3 13 Sec. 5. Section 137F.1, subsection 8, unnumbered paragraph
3 14 1, Code 2007, is amended to read as follows:

3 15 "Food establishment" means an operation that stores,
3 16 prepares, packages, serves, vends, or otherwise provides food
3 17 for human consumption and includes a food service operation in
3 18 a salvage or distressed food operation, school, summer camp,
3 19 residential service substance abuse treatment facility,
3 20 halfway house substance abuse treatment facility, correctional
3 21 facility operated by the department of corrections, the state
3 22 training school, or the Iowa juvenile home. "Food
3 23 establishment" does not include the following:

3 24 Sec. 6. Section 137F.2, Code 2007, is amended by striking
3 25 the section and inserting in lieu thereof the following:

3 26 137F.2 ADOPTION BY RULE.

3 27 The department shall, in accordance with chapter 17A, adopt
3 28 rules setting minimum standards for entities covered under
3 29 this chapter to protect consumers from foodborne illness. In
3 30 so doing, the department may adopt by reference, with or
3 31 without amendment, the United States food and drug
3 32 administration food code, which shall be specified by title
3 33 and edition, date of publication, or similar information. The
3 34 rules and standards shall be formulated in consultation with
3 35 municipal corporations under agreement with the department,
4 1 affected state agencies, and industry, professional, and
4 2 consumer groups.

4 3 Sec. 7. Section 137F.3, Code 2007, is amended to read as
4 4 follows:

4 5 137F.3 AUTHORITY TO ENFORCE.

4 6 1. The director shall regulate, license, and inspect food
4 7 establishments and food processing plants and enforce this
4 8 chapter pursuant to rules adopted by the department in
4 9 accordance with chapter 17A. Municipal corporations shall not
4 10 regulate, license, inspect, or collect license fees from food
4 11 establishments and food processing plants, except as provided
4 12 in this section.

4 13 2. A municipal corporation may enter into an agreement
4 14 with the director to provide that the municipal corporation
4 15 shall license, inspect, and otherwise enforce this chapter
4 16 within its jurisdiction. The director may enter into the
4 17 agreement if the director finds that the municipal corporation
4 18 has adequate resources to perform the required functions. A
4 19 municipal corporation may only enter into an agreement to
4 20 enforce the Iowa food code rules setting minimum standards to
4 21 protect consumers from foodborne illness adopted pursuant to

4 22 this section 137F.2 if it also agrees to enforce the Iowa
4 23 hotel sanitation code pursuant to section 137C.6. However,
4 24 the department shall license and inspect all food processing
4 25 plants which manufacture, package, or label food products. A
4 26 municipal corporation may license and inspect, as authorized

4 27 by this section, food processing plants whose operations are
4 28 limited to the storage of food products.

4 29 3. If the director enters into an agreement with a
4 30 municipal corporation as provided by this section, the
4 31 director shall provide that the inspection practices of a
4 32 municipal corporation are spot-checked on a regular basis.

4 33 4. A municipal corporation that is responsible for
4 34 enforcing this chapter within its jurisdiction pursuant to an
4 35 agreement shall make an annual report to the director
5 1 providing the following information:

5 2 ~~1-~~ a. The total number of licenses granted or renewed by
5 3 the municipal corporation under this chapter during the year.

5 4 ~~2-~~ b. The number of licenses granted or renewed by the
5 5 municipal corporation under this chapter during the year in
5 6 each of the following categories:

5 7 ~~a-~~ (1) Food establishments.

5 8 ~~b-~~ (2) Food processing plants.

5 9 ~~c-~~ (3) Mobile food units and pushcarts.

5 10 ~~d-~~ (4) Temporary food establishments.

5 11 ~~e-~~ (5) Vending machines.

5 12 ~~3-~~ c. The amount of money collected in license fees
5 13 during the year.

5 14 ~~4-~~ d. Other information the director requests.

5 15 5. The director shall monitor municipal corporations which
5 16 have entered into an agreement pursuant to this section to
5 17 determine if they are enforcing this chapter within their
5 18 respective jurisdictions. If the director determines that
5 19 this chapter is not enforced by a municipal corporation, the
5 20 director may rescind the agreement after reasonable notice and
5 21 an opportunity for a hearing. If the agreement is rescinded,
5 22 the director shall assume responsibility for enforcement in
5 23 the jurisdiction involved.

5 24 Sec. 8. Section 137F.3A, Code 2007, is amended to read as
5 25 follows:

5 26 137F.3A MUNICIPAL CORPORATION INSPECTIONS == CONTINGENT
5 27 APPROPRIATION.

5 28 1. If a municipal corporation operating pursuant to a
5 29 chapter 28E agreement with the department of inspections and
5 30 appeals to enforce this chapter and chapters 137C and 137D
5 31 either fails to renew the agreement effective after July 1,
5 32 2005, ~~but before July 1, 2007,~~ or discontinues ~~prior to July~~
~~5 33 1, 2007,~~ enforcement activities in one or more jurisdictions
5 34 during the agreement time frame, or the department of
5 35 inspections and appeals cancels an agreement ~~prior to July 1,~~
~~6 1 2007,~~ due to noncompliance with the terms of the agreement,

6 2 the department of inspections and appeals may employ
6 3 additional full-time equivalent positions ~~for the fiscal years~~
~~6 4 ending prior to July 1, 2007,~~ to enforce the provisions of the

6 5 chapters, with the approval of the department of management.
6 6 Before approval is given, the director of the department of
6 7 management shall determine that the expenses exceed the funds
6 8 budgeted by the general assembly for food inspections to the
6 9 department of inspections and appeals. The department of
6 10 inspections and appeals may hire no more than one full-time
6 11 equivalent position for each six hundred inspections required
6 12 pursuant to this chapter and chapters 137C and 137D.

6 13 2. Notwithstanding chapter 137D, and sections 137C.9 and
6 14 137F.6, if the conditions described in this section are met,
6 15 fees imposed pursuant to that chapter and those sections shall
6 16 be retained by and are appropriated to the department of
6 17 inspections and appeals ~~for the each fiscal years ending prior~~
~~6 18 to July 1, 2007,~~ year to provide for salaries, support,
6 19 maintenance, and miscellaneous purposes associated with the
6 20 additional inspections.

6 21 ~~3. This section is repealed July 1, 2007.~~

6 22 Sec. 9. Section 137F.6, Code 2007, is amended to read as
6 23 follows:

6 24 137F.6 LICENSE == REINSPECTION == PLAN REVIEW FEES.

6 25 1. The regulatory authority shall collect the following
6 26 annual license fees:

6 27 ~~1-~~ a. For a mobile food unit or pushcart, ~~twenty one~~
~~6 28 hundred~~ dollars.

6 29 ~~2-~~ b. For a temporary food establishment per fixed
6 30 location, ~~twenty-five~~ fifty dollars.

6 31 ~~3-~~ c. For a vending machine, twenty dollars for the first
6 32 machine and five dollars for each additional machine.

6 33 ~~4-~~ d. For a food establishment which prepares or serves
6 34 food for individual portion service intended for consumption
6 35 on-the-premises, the annual license fee shall correspond to

7 1 the annual gross food and beverage sales of the food
7 2 establishment, as follows:

7 3 a- (1) Annual gross sales of under fifty thousand
7 4 dollars, ~~fifty one hundred~~ dollars.
7 5 b- (2) Annual gross sales of at least fifty thousand
7 6 dollars but less than one hundred thousand dollars,
7 7 ~~eighty-five one hundred seventy~~ dollars.
7 8 c- (3) Annual gross sales of at least one hundred
7 9 thousand dollars but less than two hundred fifty thousand
7 10 dollars, ~~one hundred seventy-five three hundred fifty~~ dollars.
7 11 d- (4) Annual gross sales of two hundred fifty thousand
7 12 dollars but less than five hundred thousand dollars, ~~two four~~
7 13 hundred dollars.
7 14 e- (5) Annual gross sales of five hundred thousand
7 15 dollars or more, ~~two hundred twenty-five four hundred fifty~~
7 16 dollars.

7 17 5- e. For a food establishment which sells food or food
7 18 products to consumer customers intended for preparation or
7 19 consumption off-the-premises, the annual license fee shall
7 20 correspond to the annual gross food and beverage sales of the
7 21 food establishment, as follows:

7 22 a- (1) Annual gross sales of under ten thousand dollars,
7 23 ~~thirty sixty~~ dollars.

7 24 b- (2) Annual gross sales of at least ten thousand
7 25 dollars but less than two hundred fifty thousand dollars,
7 26 ~~seventy-five one hundred fifty~~ dollars.

7 27 c- (3) Annual gross sales of at least two hundred fifty
7 28 thousand dollars but less than five hundred thousand dollars,
7 29 ~~one hundred fifteen two hundred thirty~~ dollars.

7 30 d- (4) Annual gross sales of at least five hundred
7 31 thousand dollars but less than seven hundred fifty thousand
7 32 dollars, ~~one hundred fifty three hundred~~ dollars.

7 33 e- (5) Annual gross sales of seven hundred fifty thousand
7 34 dollars or more, ~~two hundred twenty-five four hundred fifty~~
7 35 dollars.

8 1 6- f. For a food processing plant, the annual license fee
8 2 shall correspond to the annual gross food and beverage sales
8 3 of the food processing plant, as follows:

8 4 a- (1) Annual gross sales of under fifty thousand
8 5 dollars, ~~fifty one hundred~~ dollars.

8 6 b- (2) Annual gross sales of at least fifty thousand
8 7 dollars but less than two hundred fifty thousand dollars, ~~one~~
8 8 ~~two~~ hundred dollars.

8 9 c- (3) Annual gross sales of at least two hundred fifty
8 10 thousand dollars but less than five hundred thousand dollars,
8 11 ~~one hundred fifty three hundred~~ dollars.

8 12 d- (4) Annual gross sales of five hundred thousand
8 13 dollars or more, ~~two hundred fifty five hundred~~ dollars.

8 14 7- g. For a farmers market where potentially hazardous
8 15 food is sold or distributed, one seasonal license fee of one
8 16 hundred dollars for each vendor on a countywide basis.

8 17 ~~A food establishment covered by subsections 4 and 5 shall
8 18 be assessed license fees not to exceed seventy-five percent of
8 19 the total fees applicable under both subsections.~~

8 20 h. Upon transfer of ownership of an existing food
8 21 establishment or food processing plant subject to a license
8 22 fee under paragraph "d", "e", or "f", the new owner shall pay
8 23 the last license fee amount paid by the previous owner for the
8 24 first year of licensure. In subsequent years, the licensee
8 25 shall pay the fee specified for the licensee's annual gross
8 26 sales.

8 27 i. A new applicant subject to a license fee under
8 28 paragraph "d", "e", or "f" shall pay the license fee based on
8 29 projected gross sales under each of the applicable paragraphs
8 30 for the first year of licensure. In subsequent years, the
8 31 licensee shall pay the fee specified for the licensee's annual
8 32 gross sales.

8 33 j. For a food establishment or food processing plant that
8 34 is being remodeled or newly constructed and that is subject to
8 35 a license fee under paragraph "d", "e", or "f", the applicant
9 1 shall pay, in addition to any other fees assessed under this
9 2 chapter, a plan review fee of up to two hundred fifty dollars,
9 3 as determined by the regulatory authority.

9 4 k. For a food establishment or food processing plant that
9 5 is being remodeled and that is subject to a license fee under
9 6 paragraph "d", "e", or "f", the licensee shall pay, in
9 7 addition to any other fees assessed under this chapter, a plan
9 8 review fee of up to two hundred fifty dollars, as determined
9 9 by the regulatory authority.

9 10 l. If a routine inspection or a complaint investigation of
9 11 a food establishment or food processing plant subject to a
9 12 license fee under paragraph "d", "e", or "f" reveals the
9 13 presence of one or more critical violations and requires one

9 14 or more physical reinspections, a reinspection fee equal to
9 15 fifty dollars shall be assessed for each reinspection.
9 16 Failure to pay the reinspection fee shall subject a food
9 17 establishment or food processing plant to suspension or
9 18 revocation of the food establishment's or food processing
9 19 plant's license pursuant to section 137F.7 and to the penalty
9 20 provisions of section 137F.17.

9 21 2. All fees imposed pursuant to this chapter shall be
9 22 increased annually in an amount equal to the greater of five
9 23 dollars, or the consumer price index for all urban consumers
9 24 for the immediately preceding calendar year, as published in
9 25 the federal register by the United States department of
9 26 labor's bureau of labor statistics and rounded to the nearest
9 27 increment of five dollars.

9 28 3. Fees collected by the department shall be deposited in
9 29 the general fund of the state. Fees collected by a municipal
9 30 corporation shall be retained by the municipal corporation for
9 31 regulation of food establishments and food processing plants
9 32 licensed under this chapter.

9 33 4. Each vending machine licensed under this chapter shall
9 34 bear a readily visible identification tag or decal provided by
9 35 the licensee, containing the licensee's business address and
10 1 phone number, and a company license number assigned by the
10 2 regulatory authority.

10 3 Sec. 10. Section 331.756, subsection 32, Code 2007, is
10 4 amended to read as follows:

10 5 32. Assist the department of inspections and appeals in
10 6 the enforcement of the ~~Iowa food code rules setting minimum~~
10 7 ~~standards to protect consumers from foodborne illness adopted~~
10 8 ~~pursuant to section 137F.2 and the Iowa hotel sanitation code,~~
10 9 as provided in sections 137F.19 and 137C.30.

10 10 Sec. 11. FOOD CODE APPLICABILITY == TEMPORARY PROVISIONS.
10 11 Pending the adoption of rules pursuant to section 137F.2, as
10 12 amended by this Act, the 1997 edition of the United States
10 13 food and drug administration food code, with the amendments or
10 14 exceptions thereto in effect prior to the effective date of
10 15 this Act, shall continue in effect.

10 16 Sec. 12. EFFECTIVE DATE. This Act, being deemed of
10 17 immediate importance, takes effect upon enactment.

10 18 EXPLANATION

10 19 This bill makes changes regarding the licensing and
10 20 inspection of hotels, home food establishments, and food
10 21 establishments.

10 22 The bill provides for an increase in the license fees
10 23 imposed on hotels pursuant to Code section 137C.9, for home
10 24 food establishments pursuant to Code section 137D.2, and for
10 25 food establishments and food processing plants pursuant to
10 26 Code section 137F.6. Except in the case of a mobile food unit
10 27 or pushcart licensed pursuant to Code section 137F.6,
10 28 subsection 1, whose fee is increased from \$20 to \$100, all
10 29 other fees are doubled in amount.

10 30 The bill provides for the deletion of a specific reference
10 31 to the adoption of the "food code" in Code section 137F.2,
10 32 statutory amendments or exceptions to the food code, providing
10 33 instead for the adoption of rules setting minimum standards to
10 34 protect consumers from foodborne illness. The bill provides
10 35 that the rules may incorporate by reference, with or without
11 1 amendment, the United States food and drug administration food
11 2 code, which if incorporated shall be specified by title and
11 3 edition, date of publication, or similar information, and that
11 4 the rules and standards shall be formulated in consultation
11 5 with municipal corporations under agreement with the
11 6 department, affected state agencies, and industry,
11 7 professional, and consumer groups. Conforming changes are
11 8 made to other Code provisions currently referencing the "food
11 9 code" as referred to in Code chapter 137F. The bill specifies
11 10 that until the rules are adopted, the 1997 edition of the
11 11 United States food and drug administration food code, with the
11 12 amendments or exceptions in effect prior to the effective date
11 13 of the bill, shall continue to apply.

11 14 The bill includes in the definition of a "food
11 15 establishment" in Code section 137F.1 a salvage or distressed
11 16 food operation.

11 17 Code section 137F.3A, enacted in 2006, is amended to
11 18 provide that the department of inspections and appeals may
11 19 retain fees imposed on hotels, home food establishments, and
11 20 on certain food establishments, each fiscal year and use the
11 21 fees retained for costs associated with having the department
11 22 conduct food inspections in jurisdictions where the applicable
11 23 municipal corporation fails to conduct the inspections on or
11 24 after July 1, 2005. Current law allows the department to

11 25 retain and use such fees between July 1, 2005, and July 1,
11 26 2007. The bill eliminates the future repeal of the provision
11 27 on July 1, 2007.

11 28 The bill provides for new categories of fees for
11 29 reinspection and plan review relating to food establishments
11 30 under Code chapter 137F. The bill provides that if a transfer
11 31 of ownership of a certain type of existing food establishment
11 32 or food processing plant licensed under Code section 137F.6
11 33 occurs, which would include a food establishment which
11 34 prepares or serves food for individual portion service
11 35 intended for consumption on=the=premises, a food establishment
12 1 which sells food or food products to consumer customers
12 2 intended for preparation or consumption off=the=premises, or a
12 3 food processing plant, the new owner shall pay the highest
12 4 license fee for the first year of licensure, and in subsequent
12 5 years, the fee specified for their annual gross sales.

12 6 The bill additionally provides that an applicant for
12 7 certain new licenses under Code section 137F.6 shall pay the
12 8 license fee based on projected gross sales or the previous
12 9 owner's license fee, whichever is applicable to the applicant,
12 10 for the first year of licensure and, in subsequent years, the
12 11 fee specified for their annual gross sales.

12 12 Further, for certain food establishments and food
12 13 processing plants to be licensed under Code section 137F.6
12 14 that are being newly constructed or remodeled, or for an
12 15 existing licensee undergoing remodeling, the bill provides
12 16 that the applicant or licensee shall pay, in addition to any
12 17 other fees assessed, a plan review fee of up to \$250, as
12 18 determined by the regulatory authority.

12 19 Additionally, the bill provides that if a routine
12 20 inspection or a complaint investigation of certain food
12 21 establishments and food processing plants licensed under Code
12 22 section 137F.6 reveals the presence of one or more critical
12 23 violations and requires one or more physical reinspections, a
12 24 reinspection fee equal to \$50 shall be assessed for each
12 25 reinspection. The bill specifies that failure to pay the
12 26 reinspection fee shall subject a licensee to suspension or
12 27 revocation of the license pursuant to Code section 137F.7, and
12 28 the penalty provisions of Code section 137F.17.

12 29 The bill provides that all fees imposed pursuant to Code
12 30 chapter 137F shall be increased annually in an amount equal to
12 31 the greater of \$5, or the consumer price index for all urban
12 32 consumers for the immediately preceding calendar year, as
12 33 published in the federal register by the United States
12 34 department of labor's bureau of labor statistics and rounded
12 35 to the nearest increment of \$5.

13 1 The bill takes effect upon enactment.

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13 3 nh:rj/je/5.1